

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONNE BATTLE,

Plaintiff,

No. CIV S-02-0029 DFL PAN P

vs.

LOUISE A. PRINTZ,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights complaint pursuant to 42 U.S.C. § 1983. On August 18, 2006, this court issued a pretrial order. On September 1, 2006, plaintiff filed objections to the pretrial order. The court will address plaintiff's objections seriatim.

Plaintiff first objects to the listing of defendants' objection to the admission of certain documents listed under disputed evidentiary issues. Plaintiff is advised that these disputed evidentiary issues will be addressed by the district court. If plaintiff has comments and/or objections concerning those disputes they will be addressed by the trial court at the appropriate time. The procedure for objections to documents is set forth in the pretrial order.

Plaintiff also objects to the Custodian of Records listed by defendant unless it was the same Custodian of Record employed at the time defendant Printz was employed at the

1 California Medical Facility. Plaintiff contends there have been “recent problems in medical
2 records.” (Objections at 1-2.) Plaintiff’s objection is overruled without prejudice to its renewal
3 during the custodian’s testimony at trial.

4 Plaintiff objects to the admission of his prison central file, arguing it is irrelevant
5 to plaintiff’s instant medical claims. However, defendants seek the admission of plaintiff’s
6 central file and will likely use it to impeach plaintiff’s testimony. Plaintiff’s objection is
7 overruled.

8 Plaintiff states he will not stipulate to the authenticity of any document just
9 because it is located in his central file. The authenticity of documents will be addressed at trial.

10 Finally, the pretrial order recommended that the district court dismiss defendant
11 Kearney based on failure to timely accomplish service of process, citing Fed. R. Civ. P. 4(m). In
12 his objections, plaintiff states that when Dennis Kearney returned to work, plaintiff made the
13 court aware that he had returned but nothing was done and he was not served, and it should be on
14 the docket sheet, but if the court thinks it’s best to dismiss defendant Kearney, plaintiff will abide
15 by the court’s recommendation. (Objs. at 2.) The court has reviewed the docket sheet and finds
16 no reference to such notice. The docket does reflect, however, that plaintiff was aware of how to
17 notify the court. On December 2, 2003, plaintiff filed a letter informing the court of defendant
18 Printz’ home address for service. (Docket No. 32.) On December 5, 2003, plaintiff was directed
19 to provide the forms necessary to serve defendant Printz, which plaintiff submitted on December
20 19, 2003. (Docket Nos. 33 and 36.) In his objections, plaintiff did not identify the time frame he
21 allegedly notified the court of defendant Kearney’s return, and it does not appear plaintiff
22 submitted the forms or copies of complaint necessary to serve defendant Kearney once defendant
23 Kearney returned from military service.

24 This action is proceeding on plaintiff’s September 19, 2002 amended complaint.
25 The unexecuted return of service filed December 5, 2003 noted defendant Kearney was on active
26 military duty with an estimated return date of one to two years. The court finds that it would

1 unduly prejudice defendant Kearney to attempt to bring him in as a defendant at this late date,
2 over four years later. Moreover, it would also prejudice the parties to this case as it would
3 necessitate the further delay of trial. Good cause appearing, it is recommended that defendant
4 Kearney be dismissed from this action. Fed. R. Civ. P. 4(m).

5 IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's September 1, 2006 objections are overruled; and
7 2. The August 18, 2006 pretrial order is final.

8 IT IS RECOMMENDED that defendant Kearney be dismissed from this action.
9 Fed. R. Civ. P. 4(m).

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that
15 failure to file objections within the specified time may waive the right to appeal the District
16 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: September 29, 2006.

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19 
20 UNITED STATES MAGISTRATE JUDGE

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